D.B. Civil Special Appeal (W) No. 171/2007
(Kamla & Ors. Vs. Board of Revenue, Ajmer & Ors.)

Date of Order :: 14th March, 2007

PRESENT

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. N.L. Pareek) for the appellants
with)
Mr. Pawan Pareek)

We heard Mr. N.L. Pareek, the counsel for the appellants and perused the judgment of the Single Judge as well as the judgment of the Board of Revenue, the Revenue Appellate Authority and the Sub Divisional Officer.

2. It is true that the suit filed by the predecessor-in-title of respondents No. 3 to 7 U/s. 88 readwith Section 89 and 188 of the Rajasthan Tenancy Act for his declaration as khatedar was dismissed on the ground that by virtue of Section 53-A of the Transfer of Property Act, he could not

get the decree of declaration. However, that did not preclude the predecessor-in-title of respondents No. 3 to 7 from defending the suit filed by the present appellants U/s. 183 of the Rajasthan Tenancy Act and establish that he was not trespasser and encroacher in the subject land. This defence was definitely open to the predecessor-in-title of respondents no. 3 to 7 based on un-registered sale deed (agreement of sale) entered into between the father of the present plaintiffs (appellants) and the predecessor-in-title of respondents no. 3 to 7. Before the revenue authorities it was established that the predecessor-in-title of the respondents No. 3 to 7 was in possession of the subject land for last many years. The said possession was traceable to the agreement for sale.

3. The counsel for the appellants relied upon the judgment of the Supreme Court in the case of D.S. Parvathamma Vs. A srinivasan {**(2003) 4 Supreme Court Cases 705**} wherein the doctrine of part

performance U/s. 53-A of the Transfer of Property Act has been explained. There cannot be any dispute about the legal position highlighted in paragraph 12 of the report. However the facts that have come on record and that have been found by the Board of Revenue clearly show that the predecessor-in-title of respondents No. 3 to 7, who was original defendant, was entitled to protect his possession.

4. In the circumstances, the Single Judge cannot be said to have erred in sustaining the order of the Board of Revenue.

5. The special appeal does not deserve to be admitted. Dismissed in limine.

R.S. Chauhan, J. R.M. Lodha,J.

DK/-